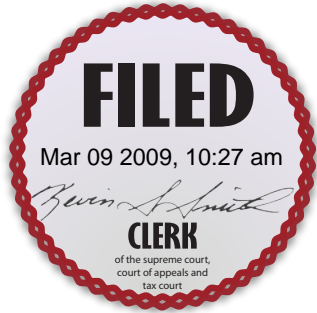


**Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**



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**IN THE  
COURT OF APPEALS OF INDIANA**

JOHN E. TURNER,

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A05-0807-CR-409

APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Stanley Kroth, Commissioner  
Cause No. 49G03-0711-FB-238468

**March 9, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**MAY, Judge**

John Turner was convicted of two counts of robbery<sup>1</sup> and two counts of criminal confinement,<sup>2</sup> all Class B felonies. The State concedes the evidence cannot support two convictions of robbery. Therefore, we reverse one of Turner's convictions of robbery and remand for resentencing.

### **FACTS AND PROCEDURAL HISTORY**

On October 22, 2007, Turner entered a branch of Chase Bank. He pointed a gun at teller Kiera Kimbrough and ordered her to put money in a bag. Kimbrough complied. Turner then approached teller Shonda Lavery and ordered her to place money in the bag. Lavery also complied. Two customers were confined during the robbery.

Kimbrough and Lavery identified Turner in a photographic array. The State charged Turner with two counts of robbery, two counts of pointing a firearm,<sup>3</sup> four counts of criminal confinement, and being an habitual offender.<sup>4</sup> Turner was found guilty as charged. The trial court entered judgment of conviction on two counts of robbery and two counts of criminal confinement, finding the other counts merged. Turner was sentenced to consecutive fifteen-year sentences for the two robbery convictions and concurrent ten-year sentences for the two criminal confinement convictions. The trial court imposed a twenty-year habitual offender enhancement, for an aggregate sentence of fifty years.

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<sup>1</sup> Ind. Code § 35-42-5-1.

<sup>2</sup> Ind. Code § 35-42-3-3.

<sup>3</sup> Ind. Code § 35-47-4-3.

<sup>4</sup> Ind. Code § 35-50-2-8.

## DISCUSSION AND DECISION

Turner raises two issues, which we consolidate and restate as whether one of the convictions of robbery must be vacated under the “single larceny” doctrine. *See Ferguson v. State*, 405 N.E.2d 902, 906 (Ind. 1980) (“single larceny” doctrine applies when property of one business is taken, even if it is taken from several employees). “Where a defendant threatens two bank tellers during a single bank robbery but takes only property of the bank and not the personal property of the tellers, the defendant is guilty of only one robbery.” *Cain v. State*, 594 N.E.2d 835, 842 (Ind. Ct. App. 1992), *reh’g granted on other grounds* 599 N.E.2d 625 (Ind. Ct. App. 1992). Turner took only the property of Chase Bank. The State concedes the single larceny doctrine applies. Therefore, we reverse one of Turner’s convictions of robbery and remand for resentencing.

Reversed and remanded.

FRIEDLANDER, J., and BRADFORD, J., concur.